



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0513]

RIN 1625-AA11

Regulated Navigation Area; Portsmouth Naval Shipyard, Kittery, ME and Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) on the Piscataqua River near the Portsmouth Naval Shipyard, Kittery, ME between Henderson Point Light on Seavey Island and the Memorial Bridge. This RNA establishes speed restrictions to eliminate vessel wake which could endanger the lives of divers and support crews working at the Portsmouth Naval Shipyard. The speed restrictions apply to all vessels transiting the regulated area unless authorized by the First Coast Guard District Commander or the Captain of the Port (COTP), Sector Northern New England.

DATES: This rule is effective from 12:01 a.m. on September 19, 2016 through 11:59 p.m. on November 2, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0513 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Craig Lapiejko, Waterways Management, First Coast Guard District; telephone (617) 223-8351, email Craig.D.Lapiejko@uscg.mil. You may also call or email Chief Petty Officer Chris Bains, Waterways Management Division, U.S. Coast Guard Sector Northern New England; telephone (207) 347-5003, email Chris.D.Bains@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
RNA	Regulated Navigation Area
COTP	Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard was recently notified of the need for this rule. This late notice did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before the rule is necessary. Delaying implementation of this rule would be impracticable and inhibit the Coast Guard’s ability to provide for the safety of divers and workers completing ship construction at the Portsmouth

Naval Shipyard. Without the rule, wake from passing vessels could cause the ship to move erratically and unexpectedly, potentially injuring divers and support crews.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register. For reasons stated in the preceding paragraph, delaying the implementation of this rule would be impracticable and would endanger workers.

III. Legal Authority and Need for Rule

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish regulated navigation areas in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

As part of a ship construction project at the Portsmouth Naval Shipyard, divers will be working on the hull of a vessel from September 19, 2016 through November 2, 2016. The Coast Guard First District Commander has determined that unexpected and uncontrolled movement of the vessel and associated equipment due to a wake puts the divers and their support crews at significant risk for serious injury or death. In order to ensure the safety of workers during the construction period, the Coast Guard is establishing an RNA to limit the speed, thus wake, of all vessels operating near the shipyard.

IV. Discussion of the Rule

This rule places speed restrictions on all vessels transiting the navigable waters of the Piscataqua River, Kittery, ME near the Portsmouth Naval Shipyard between Henderson Point Light on Seavey Island and the Memorial Bridge from 12:01 a.m. on September 19, 2016 through

11:59 p.m. on November 2, 2016. The vessels operating within the RNA are subject to a “Slow-No Wake” speed limit. More specifically, vessels may not produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steerageway.

The COTP Sector Northern New England will cause notice of enforcement or suspension of enforcement of this regulated navigation area to be made by all appropriate means in order to affect the widest distribution among the affected segments of the public. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, COTP Northern New England maintains a telephone line that is staffed at all times. The public can obtain information concerning enforcement of the regulated navigation area by contacting the Sector Northern New England Command Center at (207) 767-0303.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-

year of the regulated navigation area. The public impact of this rule will be minimal as the temporary speed restrictions only apply to a small designated area of the Piscataqua River, causing minimal delay to a vessel's transit.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit RNA may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an RNA lasting 45 days that will limit vessel speed on the Piscataqua River in vicinity of the Portsmouth Naval Shipyard while construction work is being completed. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements,

Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0513 to read as follows:

§ 165.T01-0513 Regulated Navigation Area; Portsmouth Naval Shipyard, Kittery, ME and Portsmouth, NH.

(a) **Location.** The following area is a regulated navigation area (RNA): All navigable waters on the Piscataqua River, Kittery, ME and Portsmouth, NH near Portsmouth Naval Shipyard from a line drawn between Henderson Point Light “10” (LLNR 8375) at 43°04’29.3”N, 070°44’10.2”W on Seavey Island and Pierce Island Range Front Light (LLNR 8355) at 43°04’25.4”N, 070°44’25.2”W to the Memorial Bridge at 43°04’46.8”N, 070°45’09.6”W.

(b) **Regulations.** (1) The general regulations contained in 33 CFR § 165.10, 165.11 and 165.13 apply.

(2) In accordance with the general regulations, vessel movement within the RNA is subject to a “Slow-No Wake” speed limit. No vessel may produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain steerageway.

(3) All vessels operating within the RNA must comply with all directions given to them by the Captain of the Port (COTP) Sector Northern New England or his on-scene representative.

The “on-scene representative” of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his behalf. The on-scene representative may be on a Coast Guard vessel, state marine patrol vessel, another other designated craft, or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary or Naval Harbor Security Patrol may be present to inform vessel operators of this regulation.

(4) All other relevant regulations, including but not limited to the Inland Navigation Rules (33 CFR subchapter E), remain in effect within the RNA and must be strictly followed at all times.

(c) Enforcement period. This section will be enforced 24 hours a day from September 19, 2016 through November 2, 2016.

(d) Notifications. Violations of this section may be reported to the COTP at (207) 767-0303 or on VHF-Channel 16.

Dated: August 19, 2016

S. D. Poulin,
Rear Admiral, U.S. Coast Guard,
Commander, First Coast Guard District.
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